

**FILED**

Lucinda B. Rauback, Acting Clerk  
United States Bankruptcy Court  
Augusta, Georgia  
By jpayton at 2:01 pm, May 04, 2012

**IN THE UNITED STATES BANKRUPTCY COURT****FOR THE**

**SOUTHERN DISTRICT OF GEORGIA**  
**Dublin Division**

IN RE:	)	Chapter 13 Case
	)	Number <u>10-30659</u>
MICHAEL L. DANIEL	)	
LISA J. DANIEL	)	
	)	
Debtors	)	
	)	
LISA J. DANIEL	)	
	)	
Plaintiff	)	
	)	
v.	)	Adversary Proceeding
	)	Number <u>11-03009</u>
WHEELER COUNTY STATE BANK	)	
	)	
Defendant	)	
	)	

**OPINION AND ORDER**

Before the Court is a Motion for Summary Judgment filed by Wheeler County State Bank ("the Bank") arguing that Lisa J. Daniel ("Debtor") cannot sustain her discrimination claim pursuant to 11 U.S.C. §525(b) because she was not a debtor in bankruptcy at the time her employment was terminated. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2) and the Court has jurisdiction pursuant to 28 U.S.C. §1334. For the following reasons, the Bank's motion is granted.

The facts are undisputed. On December 14, 2010, Lisa J. Daniel ("Debtor") informed her employer, the Bank, that she had

filed for bankruptcy relief and was terminated later on that same day. It is undisputed that Debtor did not actually sign and file her bankruptcy petition until December 17, 2010. Dckt. Nos. 1 and 7. The day before she filed her bankruptcy petition, Debtor received a separation notice stating that the reason for separation was that Debtor had filed for bankruptcy. Ex. A, Dckt. No. 31. There is no evidence that the Debtor has ever been a debtor in bankruptcy prior to this current bankruptcy case.

Based upon binding Eleventh Circuit precedent, the Bank's motion is granted. Section 525(b) states in pertinent part:

No private employer may terminate the employment of, or discriminate with respect to employment against, **an individual who is or has been a debtor under this title**, as debtor or bankrupt under the Bankruptcy Act, or an individual associated with such debtor or bankrupt, solely because such debtor or bankrupt—

(1) is or has been a debtor under this title or a debtor or bankrupt under the Bankruptcy Act;

(2) has been insolvent before the commencement of a case under this title or during the case but before the grant or denial of a discharge; or

(3) has not paid a debt that is dischargeable in a case under this title or that was discharged under the Bankruptcy Act.

11 U.S.C §525(b) (emphasis added); see also Kanouse v. Gunster, Yoakley & Stewart, P.A. (In re Kanouse), 168 B.R. 441 (Bankr. S.D.

Fla. 1994), aff'd, 53 F.3d 1286 (11th Cir. 1995), cert. denied, 516 U.S. 930 (1995); Davis v. Crumbley Backhoe Serv. (In re Davis), 380 F. App'x 843 (11th Cir. 2010). In Kanouse and Davis, the Eleventh Circuit held that the language of 11 U.S.C. §525 requires that a debtor be in bankruptcy when the alleged discriminatory act occurs. Davis, 380 F. App'x at 844; Kanouse, 168 B.R. at 447. In Kanouse, the debtor filed his bankruptcy petition seven months after his constructive discharge from his employment and the Court held that the plain language of the Bankruptcy Code precludes relief. Kanouse, 168 B.R. at 447. Similarly, in Davis, the Eleventh Circuit held relief was not afforded by §525(b) because the debtor was terminated a few days before he filed his bankruptcy petition. Davis, 380 F. App'x at 844 (holding "[i]t is undisputed that the debtor in this case was terminated from his employment before he filed for bankruptcy. Therefore, as in Kanouse, he was not entitled to relief under §525(b).").

In the current case, since the Debtor had not filed her bankruptcy petition at the time she was terminated, §525(b) does not apply. Only "one 'who is or has been a debtor' is afforded protection under §525(b)." Kanouse, 168 B.R. at 447; Davis, 380 F. App'x at 843.

Debtor attempts to rely upon the case of Tinker v. Sturgeon State Bank (In re Tinker), 99 B.R. 957 (Bankr. W.D. Mo.

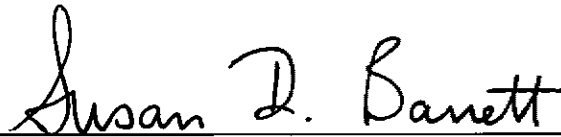
1989), which held that 11 U.S.C. §525 was an available remedy to a debtor fired five days prior to filing bankruptcy. Debtor also relies upon the dissent In re Majewski, 310 F.3d 653, 660 (9th Cir. 2002), for the proposition that Kanouse and Davis cases take a rigid and formalistic approach. However, the Tinker case and its rationale were expressly rejected by the Eleventh Circuit in Kanouse and Davis:

First, since the language of the statute is clear, it is not appropriate to consider legislative history. . . . Second, Tinker erroneously resorts to questionable legislative history in order to vary the unambiguous language of §525(b). The legislative history relied upon in Tinker is not a report that accompanied the enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984 ("BAFJA"), which Act included Section 525(b). Rather, Tinker relies upon a Senate report to the unenacted Omnibus Improvements Act of 1983, which is but one of several stillborn bills that preceded the July 10, 1984 enactment of BAFJA by both houses of Congress. Thus, even if the Court considered legislative history, the indirect legislative history cited in Tinker is not a conclusive expression of congressional intent sufficient to overcome the clear command of the statute itself. . . . Tinker was also premised on avoiding a race between employer and prospective debtor. In this case, there is no race scenario since Kanouse filed his Chapter 11 petition almost seven months after his resignation from the firm.

Kanouse, 168 B.R. at 447-48(internal citations omitted); see also Davis, 380 F. App'x at 843 (agreeing with the majority in Majewski

and concluding that "[t]hese cases [including Tinker] are clearly contrary to the court's decision in Kanouse and therefore are not persuasive in [the Eleventh Circuit]."). Like the debtors in Kanouse and Davis, it is undisputed that Debtor was terminated prior to filing bankruptcy and therefore she is not entitled to relief under §525(b).

For these reasons, the Bank's Motion for Summary Judgement is GRANTED.



SUSAN D. BARRETT  
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 4<sup>th</sup> Day of May 2012.